

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

JAMES A. MORRISON,

Plaintiff, :

District Judge Thomas M. Rose  
Magistrate Judge Michael R. Merz

-vs-

Case No. 3:09-cv-009

OFFICER MARTIN K. GREENWALD,  
et al.,

Defendants, :

---

---

**DECISION AND ORDER DENYING EXTENSION OF TIME**

---

---

This case is before the Court on Plaintiff's Motion for Extension of Time (Doc. No. 38) to respond to Defendants' Motion for Summary Judgment (Doc. No. 33). Plaintiff avers that he needs additional time to obtain his own medical records in the case and attaches a copy of an authorization to Grandview Medical Center to release his records to "any representative" of this case.

Fed. R. Civ. P. 56(f) provides that when a party shows by affidavit that he cannot present facts essential to justify opposition to the summary judgment motion, the Court may extend the time to permit further discovery as needed.

A preliminary pretrial conference was held in this case on May 26, 2009, with Plaintiff and Defendants' counsel participating by telephone. The case had at that point been pending for nearly five months. During the conference, the parties agreed on and the Court ordered a discovery cut-off date of November 30, 2009 (Scheduling Order, Doc. No. 20). On August 19, 2009, Plaintiff filed his Identification of Lay Witnesses (Doc. No. 25), listing all the parties to the case, plus Jesse Marsden and Philip Rose as witnesses to the facts in the Complaint and Theodore Smith as a

potential rebuttal witness to show the propensity of one or more of the Defendants to use excessive force or commit assault on prisoners.

The Court has examined the Motion for Summary Judgment and finds that nothing in it requires rebuttal by submission of Plaintiff's medical records. Defendants' summary judgment motion is supported by Affidavits of the Defendants and a video recording which purports to show Plaintiff assaulting a corrections officer at the Montgomery County Jail as the starting point for the events of which Plaintiff complains. Plaintiff, as an eyewitness to all the events of which he complains, is perfectly capable of giving testimony in opposition to the filed Affidavits without any access to his medical records. To the extent that witnesses he identified in August, 2009, were also eyewitnesses, he could obtain affidavits from them.

Furthermore, if the medical records were necessary, Plaintiff has not been diligent in obtaining them, since he only signed the release on January 25, 2010, more than a year after the case was filed and almost two months after the discovery cut-off.

In sum, Plaintiff has not made out a case for an extension of time under Fed. R. Civ. P. 56(f) and his Motion for Extension is denied.

February 10, 2010.

s/ **Michael R. Merz**  
United States Magistrate Judge